desires a more complete statement, we refer to Pages 1 to 39 of our brief in the Court of Appeals.

The major portion of Gray's petition here is in connection with the indemnity and contribution features as between him and the HAR CANAAN and Maritime Overseas Corporation. The only part of Gray's petition actually directed against us is the second alleged reason for granting the writ (Petition pg. 14) and the argument in support thereof found under the heading "II" at Pages 24 to 27 of the petition. In such argument Gray takes the position that he has been held liable as an insurer. This is not the holding of either the Trial Court or the Court of Appeals. The basis for the Trial Court's holding is summarized in Finding Nos. 17 and 18 which read as follows:

> "17. Captain Gray was negligent in giving the order to drop the anchor when he should have been aware of the construction and presence of the pipe lines from general knowledge, the Notices to Mariners, and the prominent warning signs which were plainly visible.
>
> 18. Captain Gray was not misled by the position of the warning signs, and was negligent in giving the order to drop the anchor without regard to the presence of the pipelines." (R. 883-884).

As is also stated in the Trial Court's Conclusion of Law No. 1 which reads as follows:

"Captain Emmett Gray is personally liable for his own acts of negligence." (R. 885).

The Court of Appeals in its opinion recites that the District Judge made full findings "in effect that the destruction of the pipelines was due to the negligence of the Respondent Emmett Gray * * *"; that Gray was contending before that Court that the findings "that he was negligent in handling the ship so as to cause injury to the pipe lines are clearly erroneous * * *"; and further recites that all Appellants attack the findings of negligence in the District Court. The Court of Appeals then states "that the District Court was right throughout in his findings of fact and in his conclusions of law, that Gray was guilty of negligence in causing the anchor to be dropped upon the pipe lines, and that, as a result of his negligence, he and other Respondents found liable are liable to the pipe line owners for the damage done them." The Court further held that it found that it was entirely proper for the District Judge to find "as he did, upon the whole facts, that the proximate cause of the injury sued for was a failure of Gray to use due care to find out where the pipe lines were * * *." The Court further held that the Trial Court's findings "as to Gray's negligence are not clearly erroneous and must be approved."

It is, therefore, clear that both the Trial Court and the Court of Appeals held Captain Gray guilty of negligence as a matter of fact. Neither Court held him liable as an insurer. The question of negligence

here is only a fact question which has been found in our favor by the District Court and affirmed by the Court of Appeals. We submit that Gray's petition should be denied as to us.

In addition, the evidence to support the finding of Gray's negligence is overwhelming. We respectfully call attention to our Brief in the Court of Appeals (Pages 1 to 39) where we summarized the voluminous testimony to support these findings. Gray gave the order to drop anchor (R. 208-209). Gray's petition seems to rely upon the fact that the warning signs were not located exactly and precisely over the lines (being necessarily a little bit off the lines while the construction work was going on - R. 284). We believe it in order to summarize the evidence showing that Captain Gray knew or should have known where the lines were including references to our Brief in the Court of Appeals where a fuller statement of the evidence on each point may be found.

Captain Gray, before giving the order to drop anchor, actually saw where the pipe lines came out of the water on the Galveston side and, therefore, could not have been in any way misled by the location of the warning signs themselves (R. 223; our Brief Pg. 26) and on the Pelican Island side, the risers where the lines came out of the water were plainly visible and could have been seen (R. 207-208 and 237; Pgs. 27-28 our Brief). Plainly visible buoys, which were tied to the lines and were resting on top of the water marking their location, were attached to and marked the loca-

tion of both lines at the time of the accident (R. 268, 303-304, 313, 355, 372, 383-384, 482, 747 and 748; our Brief Pgs. 28-30). The United States Corps of Engineers' Permits (Libellants' Exhibit 4, R. 743-744; our Brief Pg. 30) gave ample notice; the actual dredging of the trench across the Channel (R. 740, R. 253, 746, our Brief Pg. 31) also gave notice. The pipe, which subsequently was put in the trench, was open and easily visible in the trench on the Pelican Island side (R. 258-267, 746; our Brief Pg. 32). The digging of the trench from the harbor line to the bulkhead (R. 260-263, our Brief Pgs. 32, 33) showed the location. The bulldozer dug the small ditches for entry of the line into the Channel (Exhibits 19, 21 and 22, R. 263; our Brief Pg. 30); the actual operation in pulling the lines across the Channel (R. 274-267; our Brief Pg. 33) was well-known. The work done on the risers on the Galveston side (R. 270, 223, 271, 272 and 237; our Brief Pg. 34) was another factor. The Whirly (crane) Barge working at the corner of Slip A and the trimmy pipes showing where the concrete actually was being poured to hold the lines and the sea mule were all present and easily visible on the Galveston side of the line at the time the ship approached (R. 280-281; our Brief Pg. 34). The workmen on the Galveston side were hollering and screaming and waving their hat at the ship (R. 419; our Brief Pg. 35); the Notices to Mariners issued by the United States Engineers' office on November 15, 1957, December 23, 1957 and January 16, 1958 (Libellants' Exhibits 5, 6 and 7; our Brief Pgs. 35-36) and the warning signs (R. 878-879, Libellants' Exhibit 30 and our discussion of these signs at Pgs.

36-38 of our Brief) are further support for the findings of the Trial Court.

In this brief summary of the evidence in support of the Trial Court's finding on this point, we have not gone into the Record in detail but only enough to show that there was ample evidence to support the Trial Court's finding of negligence on the part of Captain Gray and the Court of Appeals' affirmance of the finding.

We, therefore, submit that as to us, the petition should be denied. Again, we are not interested in the controversy between Captain Gray and Maritime as to indemnity and contribution.

We believe the above answers any contentions asserted against us.

There are no questions of law involved as between Gray and us and we submit no basis for the granting of a writ here. Also we further submit that the findings of both the Trial Court and the Court of Appeals are correct on the facts material to us.

If any questions of law are presented here, they are limited to the controversy between Petitioner Gray and G. & H. Towing Company on the one side, and Maritime on the other as to indemnity and contribution. The HAR CANAAN and Maritime are the real Respondents here—not us.

CONCLUSION

The Respondents, Edwin E. Johansson, Kansas City Bridge Company, Merritt-Chapman & Scott Corporation and Pelican Island Development Corporation, respectfully pray that the Petition of Emmett Gray be denied, and in the alternative that any grant of certiorari be limited to the controversy between such Petitioner and the HAR CANAAN and Maritime Overseas Corporation.

Respectfully submitted,

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CERTIFICATE

I certify that a copy of the foregoing Respondents Edwin E. Johansson, Kansas City Bridge Company, Merritt-Chapman & Scott Corporation, and Pelican Island Development Corporation's Reply to Petition for Writ of Certiorari has been mailed on the 18 day of August, 1961, to Mr. Robert Eikel, 1910 Tennessee Building, Houston 2, Texas, Attorney for Petitioner Emmett Gray and for G. & H. Towing Company, and Eastham, Watson, Dale & Forney, 538 Mellie Esperson Building, Houston, Texas, Attorneys for Respondent, Maritime Overseas Corporation, Claimant of the M/V HAR CANAAN.

Preston Shirley